

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**NATIONWIDE AGRIBUSINESS
INSURANCE COMPANY,**

Plaintiff,

FRANSISCO ALCALA,

Involuntary Plaintiff,

-vs-

Case No. 12-C-1227

**MELLER POULTRY EQUIPMENT, Inc., and
MELLER ANLAGENBAU GMBH,**

Defendants.

DECISION AND ORDER

This action was removed on December 4, 2012 on the basis of diversity jurisdiction. On February 1, 2013, the plaintiffs moved to remand, arguing that this action is nonremovable because it arises under Wisconsin's workmen's compensation law. 28 U.S.C. § 1445(c). The motion to remand is untimely. 28 U.S.C. § 1447(c). Therefore, the alleged defect is waived. *Lunsford v. Cemex, Inc.*, 733 F. Supp. 2d 652, 655-56 (M.D.N.C. 2010) ("Courts have uniformly held . . . that an improperly removed case that arises under a state's workers' compensation law is a procedural defect in removal that is waived unless asserted within thirty days of removal"). In any event, the plaintiffs' claims in this action are tort claims for negligence and product liability that do not arise under Wisconsin's workmen's compensation laws. Plaintiffs cite Wis. Stat. § 102.29, which provides that an employee who

brings a worker's compensation claim retains the right to bring a tort action against third parties. The meaning of § 102.29 will "play no role in determining whether the plaintiff will prevail." *Houston v. Newark Boxboard Co.*, 597 F. Supp. 989, 991 (E.D. Wis. 1984); *Ill. ex rel. Sec'y. of Dep't of Transp. v. DeLong's, Inc.*, 57 F. Supp. 2d 639, 641 (C.D. Ill. 1999) ("negligence . . . lacks the no-fault element of Illinois' Workers' Compensation Act and may be adjudicated without any inquiry or interpretation of the Act") (citing *Spearman v. Exxon Coal, USA, Inc.*, 16 F.3d 722 (7th Cir. 1994)).

Plaintiffs' motion to remand [ECF No. 15] is **DENIED**. The Court will conduct a telephonic scheduling conference on **May 21, 2013 at 10:30 a.m. (CST)**. The parties should refer to the Court's previous notice, ECF No. 14, for details on how to proceed.

Dated at Milwaukee, Wisconsin, this 28th day of March, 2013.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge